INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 245

WATERMAN STEAMSHIP CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court (R. 170–181) is reported at 203 F. Supp. 915. The opinions of the court of appeals (R. 183–191) are reported at 330 F. 2d 128.

JURISDICTION

The judgment of the court of appeals was entered on March 30, 1964. (R. 192.) Taxpayer's petition for rehearing was denied on May 4, 1964. (R. 199.) The petition for a writ of certiorari was filed on July 2, 1964, and granted on December 7, 1964. (R. 200.) The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

What was the effect upon taxpayer's basis (for federal income tax purposes) when it applied for and received a price adjustment for eighteen vessels pursuant to Section 9 of the Merchant Ship Sales Act of 1946?

STATUTES INVOLVED

The relevant portions of the Internal Revenue Code of 1939 and of the Merchant Ship Sales Act of 1946 are set forth in the Appendix, infra, pp. 1a–15a.

STATEMENT

This case involves the determination of taxpayer's (petitioner's) basis, for federal income tax purposes, of eighteen vessels purchased by it from the United States during the Second World War. Upon taxpayer's application, the sales prices of the vessels were adjusted downward after the War pursuant to Section 9 of the Merchant Ship Sales Act of 1946, c. 82, 60 Stat. 41, 46–49 (50 U.S.C. App. 1742). The question is the effect of this price adjustment—and accompanying adjustments also provided by Section 9—upon basis and hence upon the depreciation deductions to which taxpayer was entitled for the years 1947 through 1950 (R. 170).

Between 1942 and 1946, taxpayer Waterman Steamship Corporation purchased the ships in question from the United States Maritime Commission ("Maritime") (R. 41).[1] It immediately chartered the vessels

[1] The United States Maritime Commission was abolished by Reorganization Plan No. 21 of 1950, 64 Stat. 1273, effective May 24, 1950. The Federal Maritime Board and its chairman, and the Maritime Administration and its administrator, succeeded to the functions of the Maritime Commission.

back to the United States under arrangements which continued until various dates in 1946.[2] The government paid charter hire to Waterman for the vessels, which Waterman reported as income on its federal income tax returns for 1942 through 1946. Waterman, in turn, deducted substantial depreciation and amortization for the vessels on its federal income tax returns for those years. (R. 41; Pet. Br., App. D, Ex. G, col. (d)).

On March 8, 1946, Congress enacted the Merchant Ship Sales Act of 1946. Section 4 gave citizens of the United States the right to purchase war-built vessels from the United States at statutory sales prices defined in Section 3(d). The statutory prices were a fractional part (50% in the case of cargo vessels, 87½% in the case of tankers) of the cost of similar vessels before the War (on January 1, 1941), less allowances for depreciation, wear and tear, and the special features of particular vessels. The statutory prices set by the Act were thus substantially below the prices at which similar vessels had been sold by the United States during the War.

Section 9 of the Act provided the opportunity, upon application, for those who had bought vessels between 1941 and 1946 to obtain an adjustment made "by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act

[2] The last two vessels purchased by Waterman, the *Fairport* and the *John B. Waterman*, were delivered on February 27, 1946, and March 11, 1946, respectively, one just before and the other just after the date of the Merchant Ship Sales Act (March 8, 1946), and thus were not chartered to the government before the Act. (R. 41, 163.)

[March 8, 1946], and not before that time." The details of the Section 9 adjustment were complex. Essentially it was composed of three parts: (1) a downward purchase price adjustment in the applicant's favor; (2) an adjustment in the government's favor offsetting the after-tax profit realized by the applicant through its ownership of the vessel before the Act; and (3) an adjustment in the applicant's favor representing other amounts which it would have earned instead (after taxes) had it not bought the vessel until the date of the Act.

Thus Section 9 first provided a credit to the applicant for the difference between the price it had actually paid for the vessel during the War and the 1946 statutory sales price of a similar vessel (Sections 9(b)(1)–(4), (7)). Secondly, Maritime was credited with the charter hire it had paid the applicant for use of the ship before the date of the Act (Section 9(b)(6)) while the applicant's federal income taxes for pre-statutory years were recomputed—and an appropriate refund or deficiency credited—by treating this charter hire as not having been received as income and deductions for depreciation and amortization of the ship as not having been allowable (Sections 9(b)(8) and 9(c)(1)). Thirdly, the applicant was credited with charter hire it would have received for the ship or ships it had traded in when it bought the war-built ship from Maritime (Section 9(b)(6)) and with interest representing income it would have received had it not invested funds in the vessel before the Act (Section 9(b)(5)). Correspondingly the government was

credited with federal income taxes on such charter hire and interest, these sums being treated as income in the year of the enactment of the statute (Sections 9(b)(8) and 9(c)(1)). In order to receive a Section 9 adjustment, an applicant was required to enter into a "binding" agreement with Maritime confirming the federal income tax consequences just described (Section 9(c)(1)), and overpayments of or deficiencies in federal taxes resulting from the described tax computations were treated, respectively, "as having been refunded" or "as having been paid" (Section 9(b)(8)) upon ultimate payment of an adjustment to the applicant.

Waterman applied for adjustments of the sales prices of its eighteen vessels purchased prior to the Act. The total original purchase price for these vessels was $46,973,167 (after an allowance for the trade-in of four vessels).[3] The statutory sales price of the eighteen vessels (after an allowance for the trade-in of the same four vessels) was determined by Maritime to be $17,685,424.[4] The difference ($29,287,743) was credited to Waterman through Sections 9(b)(1)–(4) of the Act.[5] The computations reflecting the unwinding of the pre-Act transactions and the

[3] The total purchase price (without trade-in allowance) was $49,582,767. (R. 41). The trade-in allowance was $2,609,600. (R. 41).

[4] The statutory price (without trade-in allowance) was $17,997,981. (R. 44). The statutory trade-in allowance (determined under Section 9(b)(7)) was $312,557. (R. 44–45).

[5] The total $29,287,743 purchase price credit was comprised of a cash credit of $11,735,951 under Sections 9(b)(1) and (4) (R. 44) and a reduction of mortgage indebtedness of $17,551,792 under Sections 9(b) (2) and (3) (R. 45).

substitution of the effects of transactions which would have occurred had sale been postponed to the date of the Act were as follows: (1) Maritime was allowed a credit of $13,430,431 under Section 9(b)(6), representing a return of the charter hire which had been paid by Maritime to Waterman for the use of the vessels prior to the Act (R. 45); (2) Waterman was allowed a credit of $1,495,125 under the same subsection, representing the amount which would have been paid by the United States as charter hire prior to the Act for the use of the four vessels traded in by Waterman when making the original purchase (R. 45–46); (3) Waterman was allowed a credit of $2,686,262 under Section 9(b)(5) as interest (at the statutory rate of 3½%), representing income which would have been received on the funds invested in the eighteen vessels prior to the Act (R. 45); (4) Waterman was allowed a credit of $430,206, representing the net refund of federal income taxes due to Waterman as a result of the tax consequences—including the disallowance of previous depreciation deductions—of the three preceding computations (R. 46). The sum of these four computations was a credit in favor of Maritime for $8,818,838 (the charter-hire credit to Maritime minus the three credits to Waterman). This amount reduced the credit of $29,287,743 due Waterman under subsections 9(b)(1)–(4) to $20,468,904.[6]

[6] The mortgage indebtedness of Waterman was reduced by $17,551,792 through Sections 9(b) (2) and (3) (R. 45) and the net cash credited to Waterman was $2,917,112 (R. 47).

In tabular form, the computations and credits made under the Act were as follows:

SCHEDULE I

Statutory Adjustments

1. Original purchase price (exclusive of trade-in)	$46,973,167	
2. Statutory sales price (exclusive of trade-in)	17,685,424	
3. Gross price adjustment (§§ 9(b)(1)–(4) and (7))		$29,287,743
4. Charter hire returned to Maritime (§ 9(b)(6))	13,430,431	
5. Credits to Waterman:		
6. Charter hire on trade-ins (§ 9(b)(6))	(1,495,125)	
7. Interest on Waterman's investment (§ 9(b)(5))	(2,686,262)	
8. Refund of taxes paid on returned charter hire (line 4) less taxes due on credited charter hire and interest (lines 6 and 7) (§ 9(b)(8))	(430,206)	
9. Net credit in favor of Maritime (line 4 minus lines 6–8)		8,818,838
10. Net payment to Waterman (line 3 minus line 9)		20,468,904[6a]

The question here is the effect of these adjustments and credits upon Waterman's basis in the eighteen vessels. The United States contends that the effect was twofold: first, by unwinding the depreciation and amortization tax deductions previously taken, Waterman's tax basis in the vessels was restored to its original cost basis in them at the time of purchase; secondly, this basis was reduced by $29,287,743—the gross purchase price credit allowed Waterman for the difference between the statutory sales price for the vessels and the price Waterman actually paid for them. Under this

[6a] The figure $20,468,904 is one dollar smaller than the difference between $29,287,743 and $8,818,838. This discrepancy is caused by the omission from these figures of amounts less than one dollar.

view, Waterman's adjusted cost basis after the statutory adjustment was $17,685,424 plus the basis of the ships traded in ($175,876) (R. 49), or $17,861,300, exactly the basis Waterman would have had in the vessels if it had bought them at the statutory sales prices under the Act in 1946. Waterman, on the other hand, contends that its adjusted cost basis in the vessels after the adjustment was its original cost basis minus only the *net* statutory credit payable to Waterman after the credit to Maritime of $8,818,838 had been subtracted. Thus Waterman would reduce its original cost basis by only $20,468,904, rather than by $29,287,743, producing a basis of $26,504,263, plus the basis of the ships traded in, a resultant basis of $26,680,139. The difference between the two contentions is $8,818,838[9b], the net credit to Maritime as a result of the unwinding and substituted computations under Sections 9(b) (5), (6), (8) and 9(c)(1).

In tabular form, the tax contentions are as follows:

SCHEDULE II

Basis Computations as Claimed by the Parties

	Government	Waterman
1. Original purchase price (exclusive of trade-in)	$46,973,167	$46,973,167
2. Gross price adjustment (Sch. I, line 3)	29,287,743	
3. Net payment to Waterman (Sch. I, line 10)		20,468,904
4. Adjusted price (exclusive of trade-in)	17,685,424	26,504,263
5. Basis of ships traded in	175,876	175,876
6. Basis as of March 8, 1946	17,861,300	26,680,139

Taxpayer took depreciation on the vessels for the years 1947–1950 on the basis as asserted by the government and sued for refund. The district court

[9b] This figure is one dollar lower than the difference between the figures shown, because all figures have been rounded off to dollar amounts.

(R. 170–175) allowed Waterman's claim. The Court of Appeals for the Fifth Circuit reversed and adopted the government's position (R. 183–186) (Judge Cameron dissenting, R. 187–191). Thereafter, the Third Circuit, affirming the United States District Court for the District of Delaware in a similar case (*National Bulk Carriers, Inc.* v. *United States,* 214 F. Supp. 585 (1963)), also adopted the government's view. *National Bulk Carriers, Inc.* v. *United States,* 331 F. 2d 407 (1964). (National Bulk has filed a petition for certiorari (No. 246).) Prior to these decisions, the Court of Claims had reached the opposite result. *Socony Mobil Oil Co.* v. *United States,* 287 F. 2d 910 (1961), rehearing denied, 289 F. 2d 326 (1961).[7]

SUMMARY OF ARGUMENT

Full application of the provisions of the Merchant Ship Sales Act of 1946—including the explicit tax provisions of Section 9—results in a basis to an applicant receiving an adjustment under the Act equivalent to the basis the applicant would have had as a purchaser under the Act. This result is consistent with the expressed purpose of the Act to treat a vessel as to which an adjustment is applied for "as if it were being sold to the applicant on the date of the enactment of this Act and not before that time." Taxpayer's contrary assertion depends upon the premise that the Act has no tax effects and that only the net adjustment credited under the Act affects an applicant's basis. This premise is demonstrably

[7] The *National Bulk* opinions and the *Socony* opinion are reprinted in the Petition for Certiorari in this case, pp. 36–69.

wrong for it wholly ignores the explicit language of Sections 9(b)(8) and 9(c)(1) of the Act. If taxpayer were correct in this assertion, however, its basis would be even lower than under the government's submission, for the net credit would have to be deducted from taxpayer's *adjusted* basis in its vessels at the time of the Act, not from taxpayer's *original* basis, as it assumes. Finally, we point out that the legislative history is entirely consistent with the government's interpretation of the statute.

ARGUMENT

UNDER THE STATUTORY SCHEME, TAXPAYER'S BASIS, AFTER THE PURCHASE PRICE ADJUSTMENT WAS MADE, WAS THE BASIS IT WOULD HAVE HAD AS A POST-WAR PURCHASER UNDER THE ACT

Introduction

Section 9(b) of the Merchant Ship Sales Act of 1946 declares that a statutory adjustment "shall be made as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act [March 8, 1946], and not before that time." The government's position in this case respects this expressed purpose by assigning a basis to a vessel, after the statutory adjustment, equivalent to the basis which would have existed had the vessel indeed been bought on the date of the enactment of the statute. Taxpayer's submission, on the other hand, would assign a basis considerably larger than the basis of a purchaser under the Act. As a result, taxpayer's theory would give it greater depre-

ciation deductions (and thus greater after-tax income) in the years following the Act than it would have had as a statutory purchaser. Its contention accordingly conflicts with the expressed purpose of Section 9(b).

The quoted language of Section 9(b) is, of course, a general directive not specifically addressed to federal income tax consequences. The precise question in this case is whether taxpayer was to be put in the same position *for federal income tax purposes* as if it had purchased its vessels under the Act rather than before the Act. We submit that the purpose of the Act to treat applicants for the statutory adjustment as though they had purchased under the Act *does* extend to their treatment for income tax purposes and, specifically, to the tax cost basis of their vessels. We seek to demonstrate this by a direct application of the subsections of Section 9(b) which, in detail, spell out the computations—including tax computations—which go to make up the adjustment payable under that section.

A. FULL APPLICATION OF THE STATUTORY PROVISIONS REQUIRES THE CONCLUSION THAT BASIS AFTER ADJUSTMENT WAS THE BASIS THE APPLICANT WOULD HAVE HAD AS A PURCHASER UNDER THE ACT

Section 9 of the Merchant Ship Sales Act of 1946 afforded wartime purchasers of merchant vessels the right to apply for price adjustments on their vessels. The primary purpose of this adjustment was to take account of the fact that wartime prices for vessels had been higher than the statutory prices at which vessels were to be sold under the Act. Subsections 9(b)(1) through (4) accordingly allowed a credit to

the wartime purchaser for the difference between the price it actually paid and the 1946 statutory sales price for a similar vessel.

If the Act had contained no additional adjustment provisions, its effect upon the basis of an applicant's vessels, for federal income tax purposes, would have been clear: The applicant's adjusted basis in the vessels immediately prior to the Act would have been reduced by exactly the amount of the purchase-price credit. The Act, however, did not simply provide a credit to an applicant for the cost differential between actual purchase price and postwar statutory price, for its aim was not merely to refund part of the purchase price but generally to treat the vessel "as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time." Thus, Congress provided for additional adjustments (in subsections 9(b)(5) and 9(b)(6)). Their design was (1) to unwind charter hire transactions which actually occurred before the date of the Act and (2) to substitute credits reflecting transactions which would have occurred had sale been postponed until the date of the Act. Under these provisions, the charter hire actually paid by the United States to the applicant prior to the Act was credited to the United States (Section 9(b)(6)). On the other hand, the applicant was credited with charter hire and other income it would have received prior to the Act had the sale been postponed until the date of the Act (Sections 9(b) (5) and (6)).

Each of the transactions thus undone or postulated in order to put the applicant generally in the position

it would have occupied had the vessel not been sold until the date of the Act had, or would have had, federal income tax consequences. As part of the adjustment, therefore, the Act also directed recomputation of an applicant's federal income taxes. (Sections 9(b)(8) and 9(c)(1)). As a condition of receiving an adjustment under the Act, Section 9(c) required the applicant to agree (1) that the charter hire actually received from the United States for the war-built ships prior to the Act "shall be treated for Federal tax purposes as not having been received or accrued as income"; (2) that "depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act for Federal tax purposes shall be treated as not having been allowable"; and (3) that the income attributed to the applicant as the interest and charter hire it would have received had it not bought the war-built vessels prior to the Act "shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the date of the enactment of this Act." The net sum derived from these tax recomputations was assigned as a credit to the party in whose favor they ran, and payment of this credit was explicitly deemed to constitute payment of the tax overpayment or deficiency created by the recomputations (Section 9(b)(8)).

As stated above, in the absence of provisions unwinding the actual pre-Act charter transactions and their federal income tax effects and substituting credits equivalent to different pre-Act transactions

and tax effects, a purchase price adjustment under the Act would simply have reduced the applicant's pre-Act adjusted cost basis in the vessels by the amount of the adjustment. The problem in the present case is to determine the different effect, if any, upon the taxpayer's basis resulting from the additional unwinding and substituting provisions just described, including the corresponding tax provisions. We submit that this effect can be correctly ascertained simply by applying each of the adjustment provisions of the Act—including the tax adjustment provisions—giving to each provision its natural effect upon the tax basis of the vessels. This is readily accomplished.

First. An applicant for an adjustment under the Act has previously received charter hire from the government for use of the vessels between the date of purchase and the date of the Act and has paid federal income taxes on these amounts. In computing these income taxes the applicant has taken depreciation and amortization deductions from his income. The deductions for depreciation and amortization have reduced the applicant's adjusted basis in the vessels by the amount of the deductions. (Section 113(b) of the Internal Revenue Code of 1939, Appendix A, *infra*, pp. 1a–2a). Aside from this lowering of the applicant's basis through allowable depreciation and amortization deductions prior to the Act, the receipt of taxable income and the payment of the proper tax thereon will have had no other effect upon the applicant's basis in the vessels prior to the Act.

Second. The Act unwinds the charter hire transactions between the applicant and the government occurring before the date of the Act and also unwinds the tax consequences of these transactions. The charter hire payments are restored to the government and federal income taxes paid thereon are restored to the applicant. As part of the tax computation, "depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act for Federal tax purposes shall be treated as not having been allowable." (Section 9(c)(1)). The return of charter hire to the government and the corresponding return of the income taxes previously paid thereon to the applicant has, of itself, no effect upon the applicant's basis. This is simply the reversal of the receipt of taxable income and the payment of tax thereon, which had no effect upon basis when it occurred. However, the retroactive disallowance of the depreciation and amortization deductions previously taken by the applicant *does* have an effect upon basis favorable to the applicant. When these deductions were taken they decreased the applicant's basis. When the deductions are disallowed and their tax benefit taken away from the applicant and restored to the government, the opposite effect is achieved and the applicant's basis is increased by the amount of the disallowed deductions. Thus, the net effect upon basis is to restore an applicant's basis to its original cost basis in the vessels (plus or minus any proper adjustments to basis, such as adjustments for improvements made in the vessels by the applicant,

which are independent of the calculations under Section 9 of the Act).

Third. The Act does not stop with an unwinding of the pre-Act charter transactions. It goes on to substitute for those transactions credits reflecting the income which the applicant would have received had it (1) received charter hire from the government on vessels traded in to buy the war-built vessels and (2) received interest on funds invested in the war-built vessels. Federal income taxes are imposed upon these credits as though they were received in the year of enactment of the Act (1946). These substituted computations do not involve any refund upon the price of the war-built vessels nor do they involve any depreciation or amortization deduction taken with respect to that price. They simply attribute taxable income to the applicant to substitute for the charter hire actually received and require the payment of proper tax upon that income to the government. These substituted computations therefore have no effect whatsoever upon the basis of the war-built vessels.

Fourth. Thus far, the adjustments under the Act have restored the applicant's basis to his original cost basis (through unwinding the pre-Act charter transactions and substituting credits equivalent to substituted compensating transactions). The Act then credits a price adjustment to the applicant in the amount of the difference between the wartime price actually paid and the statutory price payable in 1946 on sales under the Act. In contrast to the credits described in paragraph *Third,* above, no federal

income tax is imposed by the Act on account of this credit. Plainly, then, the credit is treated by the Act as return of capital. As such, this credit has the effect of reducing, *pro tanto*, the applicant's basis in the vessels and, by the same token, limiting the future depreciation and amortization deductions which can be set off against income. Thus the basis, restored to the original cost basis by the unwinding computations (see paragraph *Second, supra*), is reduced in the amount of the price credit for the difference between the wartime price paid by the applicant and the statutory sales price of the vessel payable under the Act. As a result, the basis with which an applicant emerges from the Act is the original cost basis minus the difference between original cost and statutory cost. The resultant basis is exactly the cost basis which the applicant would have had as a postwar purchaser under the Act, thus complying with the purpose of Section 9 to treat the vessel "as if it were being sold to the applicant on the date of the enactment of this Act and not before that time."

Application of the foregoing analysis to taxpayer in this case produces the following result in dollars:

(1) Waterman purchased the eighteen vessels involved for $46,973,167 plus a trade-in of four ships. Since the basis of the four ships traded in was $175,876, its original cost basis in the eighteen vessels for federal income tax purposes was $47,149,043. Between the time of its original purchase of the vessels and the date of the Act, Waterman took tax depreciation and amortization on the vessels. The record indicates

that this depreciation totalled in excess of $10,000,000,[8] thus reducing Waterman's adjusted basis in the vessels to less than $37,000,000.

(2) The unwinding of the pre-Act charter hire transactions with respect to the vessels resulted in a credit of $13,430,431 to the government for the charter hire it had paid. Correspondingly, the federal income taxes which Waterman had paid on this charter income were credited to Waterman. As part of this tax computation Waterman was disallowed the deductions of depreciation and amortization previously taken. Thus Waterman's basis in the vessels was brought back to $47,149,043.

(3) The credits to Waterman for income it would have received had it not bought the eighteen vessels prior to the Act ($1,495,125 for charter hire on trade-in vessels and $2,686,262 for interest) totalled $4,181,387. Federal income taxes were imposed on this amount and credited to the government. Combined with the tax consequences described in the preceding paragraph the total tax adjustment was a credit of

[8] Appendix D, Exhibit G, column (d), Petitioner's Appendices in the Court. The figures in column (d) total $11,300,665 (rounded to the nearest dollar). This covers depreciation taken only through October 31, 1945 (see column (a)) and does not include additional deductions taken between that date and March 8, 1946 (the date of the Act). However, Appendix D reproduces only the interim agreement between Maritime and Waterman computing Waterman's adjustment. As we state, *infra*, pp. 26–27, investigation has shown that the final agreement reflected total pre-Act depreciation deductions of somewhat less than $11,000,000, a figure more favorable to taxpayer's present position than the figure shown in the interim agreement.

$430,206 to Waterman. The tax and credit computations in this paragraph had no effect upon Waterman's basis in the eighteen war-built vessels.

(4) The purchase price credit due to Waterman was $29,287,743—the difference between the statutory sales price of the eighteen vessels ($17,685,424) and Waterman's original price ($46,973,167) (both computed after an allowance for the trade-in of four vessels). This untaxed credit, representing a return of capital to Waterman, reduced Waterman's original cost basis in that amount. Waterman's original basis was $47,149,043 (its original cost after trade-in allowance plus the $175,876 basis of the four vessels traded in on the original sale). Thus Waterman's basis as a result of the Act became $47,149,043 minus $29,287,743, or $17,861,300. This was exactly what Waterman's basis would have been had it purchased the eighteen vessels under the Act (the statutory cost of the vessels after trade-in allowance—$17,685,424—plus the $175,876 basis of the four vessels which were traded-in).

B. TAXPAYER'S ARGUMENT MISREADS THE STATUTE AND, EVEN IF ACCEPTED, WOULD NOT SUPPORT THE END-RESULT FOR WHICH IT CONTENDS

Taxpayer seems to concede that the government's position would be correct if the Act's adjustment provisions were indeed to be applied as just described. Taxpayer argues, however, that the Act's adjustment provisions should be treated as a unit, that a step by step application is erroneous, and that, in particular, federal tax effects are not to be attributed to the Act's

individual computations, which taxpayer views as merely steps in the computation of a single net adjustment credit. Taxpayer would thus attribute a federal income tax effect only to the settlement of the ultimate net credit and would simply reduce taxpayer's existing basis at the time of the Act by that amount. Taxpayer concludes that, immediately after settlement of the adjustment under the Act, its basis was its *original* cost basis in the vessels ($47,149,043) minus the amount of the Act's net adjustment credit ($20,468,904)—a resultant basis of $26,680,139.

Taxpayer's argument is wrong for two reasons. *First,* the Act cannot be read, as taxpayer would have it, as intending tax consequences to flow only from the amount of the Act's net adjustment credit. As already indicated above, the intention to take account of the federal tax effects flowing from each individual adjustment under Section 9(b) is made absolutely explicit in the legislation. *Secondly,* even if taxpayer were right in urging that federal tax consequences flow only from the settlement of the net adjustment credit, taxpayer's computation is wrongly premised. The amount of the net statutory adjustment credit would indeed be deducted directly from basis if this view were correct, but the deduction would be taken from taxpayer's *adjusted* cost basis at the time of the Act, not from taxpayer's *original* cost basis at the time of the purchase. The difference between these two figures is substantial, amounting to more than $10,000,000 in depreciation and amortization deductions taken by taxpayer on the vessels prior to the date

of the Act. As a result, if taxpayer's reading of the Act were correct, its basis would be some $10,000,000 lower than it submits; it would in fact be in a worse tax position than under the government's reading of the Act (under which the basis is $8,818,838 lower than taxpayer's submission).

1. *The Act prescribes tax effects for the individual steps of the adjustment computation.*

The principal interpretative issue between taxpayer and the United States is whether the Act prescribes federal tax effects flowing from individual computations under subsections 9(b)(5), (6) and (8), or whether the ultimate net adjustment credit is to be treated, for tax purposes, as a single indivisible unit, with federal tax effects flowing only from payment of the net amount of the credit. If tax effects *do* flow from the individual computations comprising the net credit, we have shown that taxpayer's cost basis in the vessels is first increased to its original cost basis (through the disallowance of depreciation and amortization deductions) and then reduced by $29,287,743 (the purchase price credit), rather than by the net credit of $20,468,904. This last result follows because, if the Act truly provides tax consequences, the $8,818,838 difference between these two figures represents a portion of the repayment of taxable charter-hire income to Maritime, the previous tax upon which was simultaneously repaid to taxpayer under Sections 9(b)(8) and 9(c)(1). The repayment of income accompanied by the forgiveness of tax on such income has no effect upon the basis of property. To put it

another way, if the United States is correct in saying that the return of charter hire to Maritime was accompanied, under the Act, by the refund of the taxes previously paid by the taxpayer upon such charter hire income, the taxpayer thereby received a federal income tax benefit on account of the charter hire return. To attribute to the charter hire return (as taxpayer would) an increase in taxpayer's basis as well, would be to confer a second income tax benefit to taxpayer flowing from the single repayment of one amount of charter hire—a wholly anomalous result and one plainly opposed to the stated Congressional purpose of achieving parity as between wartime and post-1946 purchasers.

Taxpayer seeks to avoid the force of this analysis by suggesting that the return of charter hire was not, in fact, accompanied by a return of income taxes on the charter hire. This position is squarely contradicted by Section 9 of the Act. Section 9(c) explicitly provides that, in order to qualify for an adjustment under the Act, an applicant must enter into an agreement that, *"for Federal tax purposes"* (not merely for purposes of making a computation, as taxpayer argues) depreciation and amortization deductions taken on the vessels before the Act "shall be treated as not having been allowable," charter hire received before the Act and returned under Section 9(b)(6) shall be treated "as not having been received or accrued as income," and income credited to the applicant under Sections 9(b)(5) and 9(b)(6) (as income which the applicant would have received had it not bought the ships until the date of the Act)

shall be treated "as having been received and accrued as income" in 1946. Section 9(b)(8) further explicitly provides that the "overpayments of Federal taxes" and "deficiencies in Federal taxes" resulting from the application of this agreement are to be "subtracted from the sum of the credits" due Maritime or the applicant under the previous provisions of Section 9. Finally, Section 9(b)(8) provides that upon the payment of the net resulting credit, "such overpayments [of federal taxes] shall be treated as having been refunded and such deficiences [of federal taxes] as having been paid."

The obvious, indeed the only conceivable, purpose of these explicit provisions was to make it clear that tax effects were to flow from the individual computations leading up to the Act's net adjustment. There would have been no other reason for the Act to require the applicant to enter "into an agreement * * * binding upon the citizen applicant and any affiliated interest" confirming the tax consequences of the computations, nor would there have been any reason to provide that, upon payment of the net credit under the Act, "overpayments [of federal taxes] shall be treated as having been refunded and * * * deficiencies [of federal taxes] as having been paid." (Section 9(b)(8)). As a result the $8,818,838 net credit to Maritime deducted from the $29,287,743 purchase price adjustment in reaching the net adjustment represented a return of untaxed ordinary income. As such, it could have no effect upon taxpayer's resulting tax basis.

The correctness of the government's reading is confirmed by reference to the conceded purpose of the

Act: To make the Section 9 adjustment "by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time." (Section 9(b)). To give effect to this statutory direction, the tax basis of an applicant receiving an adjustment should be the 1946 cost of such vessels, adjusted to take account of unrecognized gain on the trade-in of vessels and other effects upon basis independent of Section 9, such as capital improvements made in the vessels by taxpayer prior to the Act. The government's reading of the Act achieves just this result. Under taxpayer's view, on the other hand, the basis of an applicant receiving the statutory adjustment would turn on the amount of taxable charter hire received before passage of the Act and would bear no relationship to the basis the applicant would have had as a statutory purchaser. Insofar as there is any ambiguity in the provisions of Section 9—and we submit that in fact there is none—the ambiguity must certainly be resolved to accord with the general direction of Section 9 to treat the vessel (and its basis) as if it had been purchased under the Act.

Finally, there is no support for taxpayer's suggestion (Pet. Br. pp. 76-77) that, had the Act intended post-adjustment basis to be as the government contends, it would have thus provided in so many words. A provision that basis after adjustment was to be the statutory purchase price would have been erroneous, for it would not have taken account of adjustments to basis flowing from unrecognized gain in the trade-in of vessels and capital improvements made in the war-built vessels by the applicant before the date of the Act—adjustments to which an applicant was plainly

entitled. A provision precisely describing the basis of vessels in light of these and other possible adjustments would have been enormously complicated and entirely redundant in light of the tax provisions of Sections 9(b)(8) and 9(c)(1) which, when literally applied, lead, as we have shown, directly to the desired result. The Act is in fact quite explicit as to its tax effects. The only tax consequences left implicit are the effects upon tax basis of the disallowance of depreciation and amortization deductions through Section 9(c)(1) and of the allowance of the purchase-price credit provided by subsections 9(b)(1)–(4) These effects flow directly from ordinary tax principles applicable to payments constituting a return of capital. (See Section 113(b)(1) of the Internal Revenue Code of 1939, Appendix, *supra*, pp. 1a–2a.) While the Act could have declared *in haec verba* that the disallowance was to increase basis and that the purchase-price credit was to reduce it, the short of it is that those consequences are entirely routine under our system of income taxation.

2. *If only the net adjustment under the Act affects basis, taxpayer's basis, properly determined, would actually be lower than under the government's application of the statute.*

Under taxpayer's view, one should ignore the explicit tax provisions of the Act and compute an applicant's basis by simply deducting the net credit to an applicant from the basis in the vessels just prior to the Act. The Section 9 adjustment would thus be treated as would any ordinary refund upon purchase price, reducing taxpayer's net investment in the vessels and consequently reducing its basis by the amount of the refund.

This view is incorrect because, while an ordinary refund upon purchase price is accompanied by no federal income tax adjustments, the statutory refund in this case was, as we have shown, accompanied by tax adjustments modifying the impact of the net refund upon basis. If this view *were* correct, however, the basis from which the refund would be deducted would be the existing adjusted basis in the vessels just prior to the Act, not the *original* cost basis of the vessels (as taxpayer states). For example, if an asset were bought for $100, if $20 tax depreciation were subsequently taken (reducing the basis to $80), and if a $20 refund upon purchase price were then received, the resulting basis in the asset would be $60, not $80.

The interim agreement between taxpayer and Maritime entered into pursuant to Section 9(c)(1) of the Act shows that depreciation and amortization deductions taken by taxpayer prior to the Act on the vessels here involved were in excess of $11,000,000. (Ex. G, col. (d) to the agreement, printed after page D–16 in the Appendices to Petitioner's Brief). In fact, investigation by the United States of the computations underlying the final agreement—which, as printed in the Record, does not show the calculations going to make up the Section 9 tax adjustment—shows the amount of these deductions as $10,835,683, a figure more favorable to taxpayer's position than the figure shown in the interim agreement. If, therefore, taxpayer's theory were to be accepted, its

basis after the Act would be calculated by subtracting the net-adjustment credit under the Act ($20,468,904) from the adjusted basis just before the Act, which could have been no more than $37,000,000 (the original basis of $47,149,043 less at least $10,000,000). As a result, taxpayer's basis immediately after receiving the adjustment under the Act would be roughly $16,500,000, an amount more than $10,000,000 less than the figure it submits and more than $1,000,000 less than the basis under the government's proper application of the statute.

We do not urge this result. We submit that the net statutory adjustment is irrelevant for purposes of determining taxpayer's basis; for the *net* adjustment does not represent the actual return of capital to the applicant, but only the return of capital diminished by the return to the government of untaxed pre-Act charter hire after pre-Act transactions are unwound. The proper computation requires (1) readjusting taxpayer's basis upwards as the result of the disallowance under Section 9(c)(1) of previous depreciation and amortization deductions which had reduced original basis, and (2) diminishing the readjusted basis by the purchase-price adjustment in subsections 9(b)(1)–(4), the amount of which adjustment does, in fact, represent a return of capital. It is necessary to give the Act independent federal income tax effect in order to restore an applicant's basis to its original cost basis before deducting the purchase price adjustment. If taxpayer's interpretation of the

Act were to be accepted, however, that would necessitate either affirmance (if taxpayer concedes that depreciation and amortization amounted to more than $8,818,838) or remand to the district court for determination of taxpayer's precise adjusted basis just prior to the adoption of the Act.

C. THE LEGISLATIVE HISTORY IS ENTIRELY CONSISTENT WITH THE GOVERNMENT'S VIEW

As the courts below found, the legislative history of the Act supports the government's view. Specifically, the Conference Report on the bill as enacted shows that Congress clearly understood Section 9 as providing for three separate kinds of adjustments: (1) an adjustment of the purchase price; (2) an adjustment unwinding the pre-Act charter hire transactions and their tax effects; (3) an adjustment substituting income and taxes which the applicant would have had, had purchase been delayed until the date of the Act.[9] As we have shown above, application of the Act as thus providing three separate types of adjustment leads directly to the conclusion that basis after

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[9] ADJUSTMENTS OF PRIOR SALES TO CITIZENS.

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Both the House bill and the Senate amendment provided for (1) adjustment of the original purchase price, (2) adjustment of the charter hire, (3) adjustment of trade-in allowance in connection with the prior original purchase, and (4) adjustments of taxes paid on account of ownership of the vessel.

Under the House bill the owner would receive as an adjustment the difference between the statutory sales price of the vessel computed as of the date of enactment of the act and the

adjustment is equivalent to the basis an applicant would have had as a purchaser under the Act.

Taxpayer suggests in its brief (pp. 42–69) that changes made between earlier versions of the Act and the version ultimately passed militate against the government's position. The Act went through several

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price he originally paid for the vessel. The owner would return all charter hire previously received or allowed by the Government during his ownership of the vessel. The owner would be allowed 3½ percent interest on his original purchase price (but where there was a trade in, only on the difference between his original purchase price and the allowance under the trade in). Under the House bill where the original purchase involved the trade in of an old vessel, the trade in allowance is adjusted in accordance with the trade in standards prescribed under section 8 of the House bill (top limit of 10 percent of the war cost). The owner would be allowed charter hire on the traded in vessel.

Under the Senate amendment the owner would receive as an adjustment the difference between the original price (depreciated at 5 percent plus 3 or 4 percent war service) and the statutory sales price for the vessel determined as of the date of enactment of the measure. Under the Senate amendment the owner would return the difference between the charter hire he received from the Government while he owned the vessel and the charter hire he would have received had the price of the vessel been the adjusted price arrived at under the act. Under the Senate amendment the owner would receive credit for the interest he actually paid to the Government on the deferred account of his original purchase price. The Senate amendment also provides for an adjustment of the trade in allowance for a vessel traded in on the original purchase, in accordance with section 8 of the Senate amendment (which prescribes a top limit of one-third of the unadjusted statutory sales price). Under the Senate amendment no provision is made for allowance for charter hire of the traded in vessel.

The conference agreement restores the House provisions on the points stated in the two preceding paragraphs. [House Conf. Rep. No. 1526, 79th Cong., 2d Sess. 17 (1946).]

versions before settling in the form which ultimately became law. The principal difference, for present purposes, between the immediate predecessors of the final version (set out in Appendix C to Petitioner's Brief) and the version which became law was that, in the predecessors, the adjustment to pre-Act purchasers was to be made as though the Act had been in force when the vessels were actually purchased, while in the version which became law the adjustment was to be made as though the purchase had not taken place until the date of the Act. Thus, while both the immediate predecessors to the final bill and the final version itself contained provisions adjusting the difference between actual purchase price and statutory purchase price, the additional adjustment feature of the predecessors was a recomputation of pre-Act transactions as though the prior sale had been at the lower, statutory price (thus diminishing pre-Act charter hire, depreciation, etc.), whereas the additional adjustment feature of the final version was an unwinding of pre-Act transactions and a substitution of credits representing transactions which would have taken place had the sale not occurred prior to the date of enactment of the Act. Therefore, no significance, for the purposes of tax basis, can be drawn from the fact that the predecessors provided that, for adjustment purposes, the vessel "shall be considered as having been acquired at the adjusted purchase price" (Pet. Br. p. 54; Pet. Br., App. C–9), while the enacted version contained no such provision. Adjustments of pre-Act transactions under the enacted

version were to be made as though sale had not occurred until the date of the Act. There was therefore no occasion to provide that, for adjustment purposes, the vessel should be "considered as having been acquired" at the statutory price. Such a provision was necessary, however, under the predecessor bills because they proposed to recompute pre-Act transactions as though sale under the Act had *already* taken place at the statutory price.

The version of Section 9 of the Act which became law was proposed as a committee amendment on the floor of the House. (Pet. Br. p. 47; 91 Cong. Rec. Part 7, p. 9281.) The principal reason expressed for the amendment was the view that the existing version of the bill, by treating the Act as having been in force when the wartime sales were actually made, resulted in excessive refunds to applicants for adjustment. The purpose was to change the bill "so that the previous purchaser and a future purchaser will be put on exactly the same basis." (91 Cong. Rec. Part 7, p. 9282.)

Representative Henry Jackson, the manager of the committee amendment on the floor, explained it as follows (91 Cong. Record, Part 7, pp. 9182, 9185, 9282):

> Section 9 of H.R. 3603 provides for a refund to operators who purchased vessels during the war, at war cost, back to the statutory sales price contained in section 3 of the bill. Such an adjustment is fair. We do not want to place the wartime purchaser at a disadvantage with his competitor who acquires a similar vessel under the provisions of this bill.

However, section 9 contains many loopholes which in my opinion places the wartime purchaser in a far better position than future purchasers. For one thing, the wartime purchaser, under section 9, would be allowed trade-in allowances far in excess of those provided under the committee amendment to section 8.

If there is to be equality between past and future purchases there must be comparable terms and nothing less. * * *

* * * * *

I have proposed certain modifications to Section 9 of H.R. 3603 which has been accepted as a committee amendment. The effect of this amendment is to treat prior sales as having taken place on the date of the enactment of this bill. The operator is compensated for all actual money investment to date by an allowance of 3½ percent interest thereon.

The adjustments to be made under section 9 of H.R. 3603 would amount to a refund of over $89,000,000 to wartime purchasers. The modifications I proposed would reduce this sum to approximately $60,000,000. The committee amendment changes certain of my modifications over my opposition, granting an additional refund of $8,000,000 above the $60,000,000. I should like to state that my amendment to be offered tomorrow, raising the statutory sale price of tankers would further reduce the funds by about $15,000,000.

* * * * *

The committee amendment treats all of these prior sales as being made on the date of the bill's enactment and not before that time, so

> *that the previous purchaser and a future purchaser will be put on exactly the same basis.* In order to accomplish this result it is necessary to "unwind" a previous transaction, and most of the provisions of the committee amendment which appear complicated are the provisions describing how this unwinding is to be done.
>
> * * * * *
>
> These are the provisions which the amendment includes for the purpose of unwinding the previous transaction. The basic principle of the amendment is very simple—the previous transaction is to be looked upon as having taken place not when it actually did but as taking place on the date of the bill's enactment and subject to all of the bill's provisions. * * * [Emphasis added.]

If pre-Act and post-Act purchasers were to be put "on exactly the same basis" as a result of this amendment, it would be necessary to treat them as having the same capital investment in their similar vessels and, hence, as having equivalent cost bases for federal income tax purposes. Otherwise, purchasers having a higher cost investment for tax purposes would obtain advantageous economic leverage through their ability to take higher depreciation and amortization deductions from income, thus paying lower taxes on the same income than competitors having a lower tax basis.[10]

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[10] See *Socony-Mobil Oil Co.* v. *United States*, 279 F. 2d 512, 515 (Ct. Cl. 1960). It is significant that the Maritime Commission has always treated the statutory sales price of a Section 9 vessel as its cost for subsidy purposes. Federal Maritime Board

Finally, taxpayer (Br. 71–76) relies upon an attempt to amend the Merchant Ship Sales Act in 1949–1950 to provide precisely the tax advantage sought by taxpayer in this case.[11] This change passed both

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Regulations, 46 C.F.R., Sec. 284.2(b)(3). This regulation is entitled to considerable weight since it was issued by the Government agency charged with the administration of the Merchant Ship Sales Act and dates back over fifteen years to December 20, 1949, 14 Fed. Register, Part 7, p. 7589.

Taxpayer asserts (Br. 25–29) that Maritime's position was, like taxpayer's, that Section 9 in its entirety resulted in a net price adjustment and did nothing more. The Regulations and computation documents of Maritime discussed by taxpayer (Br. 25–29) were simply promulgated and used as aids in making the various computations under Section 9. They do not deal with cost basis. The Maritime Regulations referred to in the first paragraph of this footnote do deal specifically with cost basis (stating it to be the statutory sales price, for vessels whose prices were adjusted under Section 9 of the Merchant Ship Sales Act), and specifically refer to the depreciation to be taken thereon.

It was also in 1949 (two years prior to the final agreement between Maritime and taxpayer as to Section 9 adjustments (R. 51–62)) that the Commissioner of Internal Revenue announced (Mim. 6366, 1949–1 Cum. Bull. 270, 272) that for federal tax purposes, on and after March 8, 1946, the basis under Section 113(a) of the Internal Revenue Code (of 1939) of a vessel on which an adjustment under Section 9 of the Merchant Ship Sales Act had been made was the statutory sales price as determined by Maritime under the Act.

[11] The amendment would have provided, as an addition to subsection 9(b) of the Act:

> From and after March 8, 1946, the cost basis of a vessel in respect of which the price adjustment is made shall be the undepreciated original purchase price reduced by the net amount of such adjustment in favor of the applicant resulting from the application of all of the foregoing provisions of this subsection.

See H. Rep. No. 1342, 81st Cong., 1st Sess., p. 5; S. Rep. No. 1915, 81st Cong., 2d Sess., p. 5.

Houses of Congress but was vetoed by President Truman (96 Cong. Record, Part 12, p. 15792) who observed that

> other provisions of the Merchant Ship Sales Act already provide that for certain purposes the cost basis of the vessels owned by prior purchasers shall be the statutory sales price.[12] The consistent pattern of treatment provided in the act would be destroyed by granting in this one subsection the concession on cost basis entailed in this measure. Finally, the benefits accruing to prior purchasers, if they are allowed to capitalize these amounts above the statutory sales price, would afford them the special operating advantages which arise from the higher depreciation allowances possible under this measure.

It may be that many of the legislators who supported this tax-benefit legislation in 1949 and 1950 believed it would merely clarify the 1946 Act. The new legislation failed, however, because the President

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[12] The provisions referred to are Section 9(c)(2) and 9(c)(3). Section 9(c)(2) provides that the liability of the United States for post-enactment vessel use should not exceed 15 percent of the statutory sales price and that the liability of the United States for loss of the vessel should be determined on the basis of the statutory sales price. Section 9(c)(3) provides that the compensation payable by the United States for a taking or bare-boat charter subsequent to the Act should not be greater than 15 percent of the statutory sales price. The application of Section 9(c)(2) was ended by amendment in 1956 (Act of August 6, 1956, c. 1013, 70 Stat. 1068) because, for no apparent reason, those who purchased under the Act were not subject to Section 9(c)(2), and therefore, it was believed that those buying before should be equally treated. 102 Cong. Record, Part 2, pp. 1759–1760.

(the same President who had approved the 1946 Act) believed this justification false. In his view, the proposed legislation changed the Act; under it, he declared, "the consistent pattern of treatment provided in the act would be destroyed." The most that can be said for taxpayer's contention is that the President and a subsequent Congress disagreed over the meaning of the prior legislation, and that the President, deeming the amendment to constitute a significant change, refused to approve it and that it therefore failed of enactment. In these circumstances, there is particular force in the precept that "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one," *United States* v. *Price,* 361 U.S. 304, 313, quoted in *United States* v. *Philadelphia National Bank,* 374 U.S. 321, 348–349. See also, *Fogarty* v. *United States,* 340 U.S. 8, 13–14; *United States* v. *Wise,* 370 U.S. 405, 411: "The interpretation placed upon an existing statute by a subsequent group of Congressmen who are promoting legislation and who are unsuccessful has no persuasive significance here."

The government relies upon the statute as written in 1946 and upon the declaration of the Congress which enacted it.

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be affirmed. If, however, taxpayer's interpretation of the Act should be accepted and taxpayer's adjusted basis prior to the Act is not stipulated, the case should be remanded to the district court for a determination of taxpayer's adjusted basis

immediately prior to enactment of the Merchant Ship Sales Act of 1946.

Respectfully submitted.

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APRIL 1965.

APPENDIX

Internal Revenue Code of 1939:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * *

(l) [As amended by Sec. 121(c) of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Depreciation.*—A reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) of property used in the trade or business, * * *

* * * * *

(n) *Basis for Depreciation and Depletion.*—The basis upon which depletion, exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be as provided in section 114.

* * * * *

(26 U.S.C. 1952 ed., Sec. 23.)

SEC. 113. ADJUSTED BASIS FOR DETERMINING GAIN OR LOSS.

(a) *Basis (Unadjusted) of Property.*—The basis of property shall be the cost of such property; * * *

* * * * *

(b) *Adjusted Basis.*—The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as hereinafter provided.

(1) *General rule.*—Proper adjustment in respect of the property shall in all cases be made—

(A) [As amended by Section 130(b) of the Revenue Act of 1942, *supra*] For expendi-

tures, receipts, losses, or other items, properly chargeable to capital account, but no such adjustment shall be made for taxes or other carrying charges * * * for which deductions have been taken by the taxpayer in determining net income for the taxable year or prior taxable years;

(B) [As amended by Sec. 1 of the Act of July 14, 1952, c. 741, 66 Stat. 629] in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent of the amount—

(i) allowed as deductions in computing net income under this chapter or prior income tax laws, * * *

(26 U.S.C. 1952 ed., Sec. 113.)

SEC. 114. BASIS FOR DEPRECIATION AND DEPLETION.

(a) *Basis for Depreciation.*—The basis upon which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 113(b) for the purpose of determining the gain upon the sale or other disposition of such property.

* * * * *

(26 U.S.C. 1952 ed., Sec. 114.)

Merchant Ship Sales Act of 1946, c. 82, 60 Stat. 41 as amended by Reorganization Plan No. 21 of 1950, 64 Stat. 1273, 1276:

SEC. 2. (a) It is necessary for the national security and development and maintenance of the domestic and the export and import foreign commerce of the United States that the United States have an efficient and adequate American-owned merchant marine (1) sufficient to carry its domestic water-borne commerce and a substantial portion of its water-borne export and import foreign commerce and to provide shiping service on all routes essential for maintaining the flow of such domestic and foreign water-borne commerce at all times; (2) capable of

serving as a naval and military auxiliary in time of war or national emergency; (3) owned and operated under the United States flag by citizens of the United States; (4) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel; and (5) supplemented by efficient American-owned facilities for shipbuilding and ship repair, marine insurance, and other auxiliary services.

(b) It is hereby declared to be the policy of this Act to foster the development and encourage the maintenance of such a merchant marine.

(50 U.S.C. App., 1952 ed., Sec. 1735.)

SEC. 3. As used in this Act the term—

(a) "Secretary" means the Secretary of Commerce.

(b) "War-built vessel" means an oceangoing vessel of one thousand five hundred gross tons or more, owned by the United States and suitable for commercial use—

(1) which was constructed or contracted for by or for the account of the United States during the period, beginning January 1, 1941, and ending with September 2, 1945; or

(2) which, having been constructed during the period beginning September 3, 1939, and ending with September 2, 1945, was acquired by the United States during such period.

(c) "Prewar domestic cost," as applied to any type of vessel, means the amount determined by the Secretary, and published by the Secretary in the Federal Register, to be the amount for which a standard vessel of such type could have been constructed (without its national defense features) in the United States under normal conditions relating to labor, materials, and other elements of cost, obtaining on or about January 1, 1941. In no case shall the prewar domestic cost of any type of vessel

be considered to be greater than 80 per centum of the domestic war cost of vessels of the same type.

(d) "Statutory sales price", as applied to a particular vessel, means, in the case of a dry-cargo vessel, an amount equal to 50 per centum of the prewar domestic cost of that type of vessel, and in the case of a tanker, such term means an amount equal to 87½ per centum of the prewar domestic cost of a tanker of that type, such amount in each case being adjusted as follows:

(1) If the Secretary is of the opinion that the vessel is not in class, there shall be subtracted the amount estimated by the Secretary as the cost of putting the vessel in class.

(2) If the Secretary is of the opinion that the vessel lacks desirable features which are incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be lower if the standard vessel had also lacked such features, there shall be subtracted the amount estimated by the Secretary as the amount of such resulting difference in statutory sales price.

(3) If the Secretary is of the opinion that the vessel contains desirable features which are not incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be higher if the standard vessel had also contained such features, there shall be added the amount estimated by the Secretary as the amount of such resulting difference in statutory sales price.

(4) There shall be substracted, as representing normal depreciation, an amount computed by applying to the statutory sales price (determined without regard to this paragraph) the rate of 5 per centum per annum for the period beginning with the date of the original delivery

of the vessel by its builder and ending with the date of sale or charter to the applicant in question, and there shall also be subtracted an amount computed by applying to the statutory sales price (determined without regard to this paragraph) such rate not in excess of 3 per centum per annum in the case of a vessel other than a tanker, and not in excess of 4 per centum per annum in the case of a tanker, for such period or periods of war service as the Secretary determines will make reasonable allowance for excessive wear and tear by reason of war service which cannot be or has not been otherwise compensated for under this subsection.

No adjustment, except in respect of passenger vessels constructed before January 1, 1941, shall be made under this Act which will result in a statutory sales price which (1) in the case of dry-cargo vessels (except Liberty type vessels) will be less than 35 per centum of the domestic war cost of vessels of the same type, (2) in the case of any Liberty type vessel will be less than 31½ per centum of the domestic war cost of vessels of such type, or (3) in the case of a tanker will be less than 50 per centum of the domestic war cost of tankers of the same type. For the purposes of this Act, except section 5, all Liberty vessels shall be considered to be vessels of one and the same type.

(e) "Domestic war cost" as applied to any type of vessel means the average construction cost (without national defense features) as determined by the Secretary, of vessels of such type delivered during the calendar year 1944, except in case of any type of vessel the principal deliveries of which were made after the calendar year 1944, there shall be used in lieu of such year 1944 such period of not less than six consecutive calendar months as the Secretary shall find to be most representative of war production costs of such type.

(f) "Cessation of hostilities" means the date proclaimed by the President as the date of the cessation of hostilities in the present war, or the date so specified in a concurrent resolution of the two Houses of the Congress, whichever is the earlier.

(g) "Citizen of the United States" includes a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act of 1916, as amended. The term "affiliated interest" as used in sections 9 and 10 of this Act includes any person affiliated or associated with a citizen applicant for benefits under this Act who the Secretary, pursuant to rules and regulations prescribed hereunder, determines should be so included in order to carry out the policy and purposes of this Act.

(50 U.S.C. App., 1952 ed., Sec. 1736.)

SEC. 4. (a) Any citizen of the United States may make application to the Secretary to purchase a war-built vessel, under the jurisdiction and control of the Secretary, at the statutory sales price. If the Secretary determines that the applicant possesses the ability, experience, financial resources, and other qualifications, necessary to enable him to operate and maintain the vessel under normal competitive conditions, and that such sale will aid in carrying out the policies of this Act, the Secretary shall sell such vessel to the applicant at the statutory sales price.

(b) At the time of sale, the purchaser shall pay to the Secretary at least 25 per centum of the statutory sales price. The balance of the statutory sales price shall be payable in not more than twenty equal annual installments, with interest on the portion of the statutory sales prices remaining unpaid, at the rate of 3½ per centum per annum, or shall be payable under such other amortization provisions which permit the purchaser to accelerate payment of

the unpaid balance as the Secretary deems satisfactory. The obligation of the purchaser with respect to payment of such unpaid balance with interest shall be secured by a preferred mortgage on the vessel sold.

(c) The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price, shall not restrict the lawful or proper use or operation of the vessel.

(50 U.S.C. App. 1952 ed., Sec. 1737.)

* * * * *

SEC. 8. (a) The Secretary is authorized to acquire, in exchange for an allowance of a credit on the purchase of any war-built vessel under section 4 or any vessel acquired through exchange under subsection (d) of this section—

(1) Any vessel owned by a citizen of the United States, other than a vessel purchased under this Act; or

(2) Any vessel owned by a foreign corporation, if—

(A) the vessel was constructed in the United States, and has, after December 7, 1941, been chartered to, or otherwise taken for use by, the United States; and

(B) the controlling interest in such corporation is, at the time of acquisition of such vessel hereunder, owned by a citizen or citizens of the United States, and has been so owned for a period of at least three years immediately prior to such acquisition; and

(C) such corporation agrees that the war-built vessel purchased with the use of such credit shall be owned by such citizen or citizens and shall be documented under the laws of the United States.

Such allowance shall not be applied upon the cash payment required under section 4. A war-built vessel shall be deemed a "new vessel" for the purpose of section 511 of the Merchant Marine Act, 1936, as amended, and section 510 (e) of such Act shall be applicable with respect to vessels exchanged under this section to the

same extent as applicable to obsolete vessels exchanged under section 510 of such Act.

(b)(1) If, prior to December 31, 1946, the owner of a vessel eligible for exchange under subsection (a) makes a firm offer binding for at least ninety days, to transfer the vessel to the Secretary in exchange for an allowance of credit provided in subsection (a), the amount of such allowance shall be the fair and reasonable value of the vessel as determined by the Secretary under this section. In making such determination the Secretary shall consider: (A) The value of the vessel determined in accordance with the standards of valuation established pursuant to Executive Order 9387 (8 F.R. 14105) as of the date of such offer, (B) any liability of the United States for repair and restoration of the vessel, (C) the utility value of the vessel, (D) the effect of this Act upon the market value of such vessel, and (E) the public interest in promoting exchanges of vessels as a means of rehabilitating and modernizing the American merchant marine. In no event shall the amount of such allowance, in case of dry cargo vessels and tankers, exceed (A)(1) if the vessel or vessels tendered in exchange are of equal or greater dead-weight tonnage than the war-built vessels or vessels being acquired, 33⅓ per centum of the statutory sales price (unadjusted) of the war-built vessel or vessels, or (2) if the vessel or vessels tendered in exchange are of lesser dead-weight tonnage than the war-built vessel or vessels, such proportionate part of 33⅓ per centum of the statutory sales price (unadjusted) of such war-built vessel or vessels as the dead-weight tonnage of such vessel or vessels tendered in exchange bear to the dead-weight tonnage of such war-built vessel or vessels, or (B) the liability of the United States in connection with the repair or restoration of such vessel under any charter to which the United States is a

party, whichever is higher. In the case of passenger vessels tendered in exchange, the amount of the allowance shall not exceed the percentages of statutory sales price computed under (A) (1) and (2) above by gross tons instead of dead-weight tons, or such liability for the repair or restoration of such passenger vessel, whichever is the higher. In any case where the vessel tendered in exchange was acquired from the United States, the exchange allowance under this section shall not exceed the price paid the United States therefor plus the depreciated cost of any improvements thereon. In the case of any vessel tendered in exchange which has been restored to condition by the United States for the purpose of redelivering such vessel to its owner in compliance with the charter of such vessel with the United States, or where, for such restoration a cash allowance has been made to the owner, there shall be deducted from the amount of the allowance of credit for such vessel determined by the Secretary under this section, an amount equal to the liability of the United States for such restoration or such cash allowance made to the owner.

(2) If, after such offer is made, and prior to its acceptance, or prior to the acquisition of the vessel, by the Secretary, the vessel is lost by reason of causes for which the United States is responsible, then in lieu of paying the owner any amount on account of such loss, the offer shall, for the purposes of subsection (a) and this subsection, be considered as having been accepted and the vessel as having been acquired by the Secretary under subsection (a) immediately prior to such loss.

(c) The Secretary is also authorized to make available any war-built vessel for transfer in complete or partial settlement of any claim against the United States (1) for just compensation upon requisition for title of any vessel, or (2) for indemnity for the loss of any

vessel which was acquired for use by the United States, but only to the extent such vessel is available for sale to the claimant.

(d) In the case of any vessel constructed in the United States after January 1, 1937, which has been taken by the United States for use in any manner, the Secretary, if in its opinion the transfer would aid in carrying out the policies of this Act, is authorized to transfer to the owner of such vessel another vessel which is deemed by the Secretary to be of comparable type with adjustments for depreciation and difference in design or speed, and to the extent applicable, adjustments with respect to the retained vessel as provided for in section 9, and such other adjustments and terms and conditions, including transfer of mortgage obligations in favor of the United States binding upon the old vessel, as the Secretary may prescribe.

(50 U.S.C. App., 1952 ed., Sec. 1741)

SEC. 9. (a) A citizen of the United States who on the date of the enactment of this Act—

(1) owns a vessel which he purchased from the Secretary prior to such date, and which was delivered by its builder after December 31, 1940; or

(2) is party to a contract with the Secretary to purchase from the Secretary a vessel, which has not yet been delivered to him; or

(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Secretary under section 504 of the Merchant Marine Act, 1936, as amended, and which was delivered by its builder after December 31, 1940; or

(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Secretary under section 504 of the Merchant Marine Act, 1936, as amended;

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Secretary may prescribe, within sixty days after the date of publication of the applicable prewar domestic costs in the Federal Register under section 3(c) of this Act. No adjustment shall be made under this section in respect of any vessel the contract for the construction of which was made after September 2, 1945, under the provisions of title V (including section 504) or title VII of the Merchant Marine Act, 1936, as amended.

(b) Such adjustment shall be made as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time. The amount of such adjustment shall be determined as follows:

(1) The Secretary shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel as of such date of enactment. If such payment was less than 25 per centum of the statutory sales price of the vessel, the applicant shall pay the difference to the Secretary.

(2) The applicant's indebtedness under any mortgage to the United States with respect to the vessel shall be adjusted.

(3) The adjusted mortgage indebtedness shall be in an amount equal to the excess of the statutory sales price of the vessel as of the date of the enactment of this Act over the sum of the cash payment retained by the United States under paragraph (1) plus the readjusted trade-in allowance (determined under paragraph (7)) with respect to any vessel exchanged by the applicant on the original purchase. The adjusted mortgage indebtedness shall be payable in equal annual installments

thereafter during the remaining life of such mortgage with interest on the portion of the statutory sales price remaining unpaid at the rate of 3½ per centum per annum.

(4) The Secretary shall credit the applicant with the excess, if any, of the sum of the cash payments made by the applicant upon the original purchase price of the vessel plus the readjusted trade-in allowance (determined under paragraph (7)) over the statutory sales price of the vessel as of the date of the enactment of this Act to the extent not credited under paragraph (1).

(5) The Secretary shall also credit the applicant with an amount equal to interest at the rate of 3½ per centum per annum (for the period beginning with the date of the original delivery of the vessel to the applicant and ending with the date of the enactment of this Act) on the excess of the original purchase price of the vessel over the amount of any allowance allowed by the Secretary on the exchange of any vessel on such purchase; the amount of such credit first being reduced by any interest on the original mortgage indebtedness accrued up to such date of enactment and unpaid. Interest so accrued and unpaid shall be canceled.

(6) The applicant shall credit the Secretary with all amounts paid by the United States to him as charter hire for use of the vessel (exclusive of service, if any, required under the terms of the charter) under any charter party made prior to the date of the enactment of this Act, and any charter hire for such use accrued up to such date of enactment and unpaid shall be canceled; and the Secretary shall credit the applicant with the amount that would have been paid by the United States to the applicant as charter hire for bare-boat use of vessels exchanged by the applicant on the original purchase (for the period beginning with the date on which the vessels so exchanged were de-

livered to the Secretary and ending with the date of the enactment of this Act).

(7) The allowance made to the applicant on any vessel exchanged by him on the original purchase shall be readjusted so as to limit such allowance to the amount provided for under section 8.

(8) There shall be subtracted from the sum of the credits in favor of the Secretary under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c)(1), and there shall be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant resulting from the application of subsection (c)(1). If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Secretary, such excess shall be paid by the Secretary to the applicant. If, after making such subtractions, the sum of the credits in favor of the Secretary exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Secretary. Upon such payment by the Secretary or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid.

For the purposes of this subsection, the purchase price of a vessel on account of which a construction-differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended, shall be the net cost of the vessel to the owner.

(c) An adjustment shall be made under this section only if the applicant enters into an agreement with the Secretary binding upon the citizen applicant and any affiliated interest to the effect that—

(1) depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act for Federal tax purposes shall be treated as not having been allowable; amounts credited to the Secretary under subsection (b)(6) shall be treated for Federal tax purposes as not having been received or accrued as income; amounts credited to the applicant under subsection (b) (5) and (6) shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the date of the enactment of this Act;

(2) [As amended by the Act of August 6, 1956, c. 1013, 70 Stat. 1068, 50 U.S.C. App., Supp. V, 1742] the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the vessel on or after the date of the enactment of this Act under any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of such date of enactment; and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act, depreciated to the date of loss at the rate of 5 per centum per annum: *Provided,* That the provisions of this subsection (c)(2) shall not apply to any such charter party executed on or after the date of enactment of this amendatory proviso; and the Secretary of Commerce is directed to modify any adjustment agreement to the extent necessary to conform to the provisions of this amendatory proviso; and

(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bare-boat charter made, on or after the date of the enactment of this Act, the compensation to be paid to the purchaser, his re-

ceivers, and trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

(d) Section 506 of the Merchant Marine Act, 1936, as amended, shall not apply with respect to (1) any vessel which is eligible for an adjustment under this section, or (2) any vessel described in clause (1), (2), (3), or (4) of subsection (a) of this section, the contract for the construction of which is made after September 2, 1945, and prior to the date of enactment of this Act.

(50 U.S.C. App., 1952 ed., 1742.)

SEC. 10. No person shall be eligible to purchase or charter a war-built vessel under this Act, or to receive an adjustment under section 9, unless such person makes an agreement with the Secretary binding upon such person and any affiliated interest to the effect that the liability of the United States under any charter party or taking for use, made or effected prior to the date of the enactment of this Act, for the loss, on or after such date of enactment and prior to September 3, 1947, of any vessel owned by such person and under charter to the United States (excluding a vessel with respect to which an adjustment is made under section 9) shall be limited to an amount equal to just compensation as of the date of said loss, determined pursuant to existing law, or such amount as may be mutually agreed upon subsequent to the date of the enactment of this Act as just compensation under the provisions of existing law.

(50 U.S.C. App., 1952 ed., 1743.)

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